IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 116 AND 117 OF 2002

1. M/s. Velho & Filhos,
   a Partnership Firm,
   having its Office at
   Velho Building.
   Dr. Domingos Roque de
   Souza Road, Panaji,
   represented by Petitioner
   No.4. Mr. Verner Velho.

2. Mr. Jose Virgilio
   Joaquim Coelho Velho,
   In business, residing at
   House No.102, Bernard
   Guedes Road, Panaji.

3. Dr. Rachita Gupta Velho,
   Medical Professional,
   Residing at House No.102,
   Bernard G. Road,
   Panaji, Goa.

4. Mr. Verner Velho,
   In business,
   Residing at House No.102,
   Bernardo G. Road,
   Panaji, Goa. ... Petitioners.

versus

Goan Peoples' Urban
Co-operative Bank Ltd.,
A Co-operative Bank,
having Office at G-7,
Souza Towers,
Near Municipal Garden,
Panaji, Goa. ... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Mr. A. D. Bhobe, Advocate for the Petitioners in both the Petitions.

Mr. A. N. S. Nadkarni, Advocate General with Mr. M. S. Sonak and Mr. D. Pangam, Advocates for the Respondents in both the Petitions.

CORAM: P. V. HARDAS, J.

DATED: 14TH AUGUST,2003.

ORAL JUDGMENT

Rule returnable forthwith. Learned Counsel for Respondents waive service.

2. Since the point which is urged in both the Petitions is identical and also as the learned Co-operative Tribunal of Goa, Presiding Officer of the Co-operative Tribunal at Goa, Panaji, had decided the Co-operative Appeals against which the present Writ Petitions are filed, by a common Judgment, both the Petitions are decided by this common Judgment.

3. In view of the restricted challenge in the Writ Petitions, to which I shall advert to shortly, it is not necessary to deal with the facts in detail. Suffice it to say that the Nominee of the Registrar of Co-operative Societies, Panaji, Goa, decided the dispute filed by the present Respondent No.1/Bank and directed the present Petitioners, in both the Petitions, to pay the amount of claim plus the interest at the contractual

rates with quarterly rests plus penal interest at 3%. Against the said decision of the Nominee of the Registrar of Co-operatve Societies, the Petitioners herein had preferred Co-operative Appeal Nos. 10 of 2000 and 11 of 2000. The learned Co-operative Tribunal, Panaji, Goa, by its Judgment dated 28th September, 2001, had quashed and set aside the Order passed by the Nominee of the Registrar of Co-operative Societies and had remitted the matters back for proceeding de novo from the stage of filing the written statement. The Respondent Bank being aggrieved by the Judgment of the Co-operative Tribunal, Panaji, Goa, had filed Writ Petition Nos. 24 of 2002 and 25 of 2002. The learned Single Judge of this Court by the Judgment in the Writ Petitions dated 21st February, 2002, allowed the Petitions and directed the learned President of the Co-operative Tribunal, Goa, to decide the Appeals on merit. Accordingly, the Co-operative Tribunal, Goa, by the Judgment impugned in the present Appeals dated 18th March, 2002, dismissed the Appeals filed by the Petitioners herein. The Petitioners thus being aggrieved have filed the present Petitions.

4. In Writ Petition No.116 of 2002, the Respondent Bank in the dispute had claimed Rs.19,71,964-27 as on 23rd July, 1999 and future

interest at the rate of 18% per annum from 1st July, 1999 as also penal interest of 3% from the date of default till the date of actual payment. The Registrar's Nominee allowed the dispute and directed the Petitioners in both these Petitions to pay to the Respondent Bank the amount which was claimed plus future interest at the rate of 18% per annum with quarterly rests plus penal interest at 3% from 1st July, 1999 till the entire amount was recovered with costs. Admittedly, the dispute before the Nominee of the Registrar of Co-operative Societies was filed on 23rd July, 1999.

5. Various contentions have been urged in the present Petitions on behalf of the Petitioners. However, at the time of hearing of the present Petitions, Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of the Petitioners in both the Petitions has only urged the following ground. According to the learned Senior Counsel appearing on behalf of the Petitioners in both the Petitions, the Nominee of the Registrar has committed gross illegality in awarding future interest at quarterly rests as well as penal interest at 3% from 1st July, 1999. According to the learned Senior Counsel appearing on behalf of the Petitioners in both the Petitions, the

contract/agreement for the payment of the interest of 18% with quarterly rests and penal interest at the rate of 3% would come to an end the moment the dispute is filed and the grant of future interest would be governed by the provisions of Section 34 of the Code of Civil Procedure. Thus, the Nominee of the Registrar, according to the learned Senior Counsel appearing on behalf of the Petitioners has committed gross illegality in awarding the future interest as was prayed. It is also urged that the learned Co-operative Tribunal has relied on a Judgment of the Division Bench of this Court in **Goa Urban Co-op Bank** v. **Antonio Furtado** 2001(2) Goa L.T.177 in repelling the contention as is advanced before me. The reliance on the said reported Judgment is wholly misplaced as the ratio cannot be applied to the facts of the present case.

6. Mr. A. N. S. Nadkarni, learned Advocate General appearing on behalf of the Respondent Bank has submitted that the provision of Section 34 of the Code of Civil Procedure is inapplicable to the proceedings under the Maharashtra Co-operative Societies Act as is made applicable to the State of Goa. He further submits that the Nominee of the Registrar of Co-operative Societies has not committed any illegalities in awarding 18% interest at quarterly rests plus 3% penal interest.

He has thus submitted that the Judgments of the two Courts below need no interference, while urging that this Court should not re-appreciate the evidence.

7. The Apex Court in **Central Bank of India** v. **Ravindra and others** (2002) 1 SCC 367 has held that prior to capitalisation the Banks would be justified in charging the contractual rate of interest with certain rests and also would be entitled to charge penal interest. The Apex Court further held that the principal sum would include the loan advanced plus the interest so calculated at the stage of institution of the suit and it is on this principal sum that interest and future interest as per the provisions of Section 34 could be awarded.

8. The contention of the learned Advocate General that the provisions of Section 34 are inapplicable to the proceedings under the Co-operative Societies Act need not be decided at this stage. The contract, undoubtedly, regarding the payment of interest which may include terms regarding periodical rests and penal interest etc. would come to an end on the institution of the suit. Under Section 34 of the Code of Civil Procedure, the Court cannot grant compound interest and penal interest though, in certain situations the Court may grant the contractual rates of interest but

obviously that would be simple interest and not compound interest. Even assuming that the provisions of Section 34 are not applicable to the proceedings in the absence of any provisions under the Co-operative Societies Act empowering the Courts to award the contractual rates of interest with periodical rests and penal interest as future interest post award, the Courts will have to award such rate of interest as the Court considers reasonable and justifiable in the given circumstances.

9. The Judgment of this Court in **Goa Urban Co-operative Bank v. Antonio Furtado**(supra) deals with the power of the Bank to charge interest with periodical rests and also to charge penal interest. This Court held that the Banks could charge compound interest and if there was provision in the bye laws or the agreement could also charge penal interest. This is not an authority on the power of Court to award compound interest and penal interest as post award future interest.

10. Since the contract/agreement regarding the payment of interest had come to an end when the Respondent Bank filed the dispute on 29th July, 1999, the future interest would be governed by the principles of Section 34 of the Code of Civil Procedure. Therefore, according to me, the Order impugned in the

present Petitions in so far as the interest at the rate of 18% with quarterly rests plus penal interest at the rate of 3% is awarded is wholly unsustainable. There is no challenge on behalf of the Petitioners to the other findings recorded by the two Authorities below.

11. In pursuance to the various interim Orders passed by this Court, the Petitioners in both the Petitions have paid to the Respondent Bank an amount of Rs.65,00,000/-. This Court had directed that the credit of the amount so deposited shall be given to the Petitioners and that amount shall be taken as part of the principal amount payable and to be adjusted. Since, the learned Single Judge of this Court had directed the Petitioners to pay to the Respondent Bank and the payment was to be made towards the principal amount, I see no reason for modification of the Order which is already passed.

12. In my considered opinion, therefore, the Writ Petitions deserve to be allowed. The impugned Orders in so far as the Authorities below have awarded future interest at the rate of 18% per annum with quarterly rests plus 3% penal interest from 1st July, 1999 is hereby quashed and set aside and it is directed that the Petitioners shall pay future interest at the rate of 12% per annum from the date of institution of the dispute

till realisation of the amount from the Petitioners.

13. Rule made absolute accordingly with no order as to costs.

P. V. HARDAS, J.

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